

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT DONALD DAVIS,

Plaintiff,

v.

WALMART INC., ET AL.,

Defendants.

Case No. 1:22-cv-01381-ADA-CDB

SCHEDULING ORDER (Fed. R. Civ. P. 16)

Discovery Deadlines:

- Pleading Amendments: April 27, 2023
- Expert Disclosures: September 15, 2023
- Fact Discovery Cut-Off: September 1, 2023
- Expert Discovery Cut-Off: November 17, 2023
- Mid-Discovery Status Conference: July 19, 2023, at 10:30 a.m., in Bakersfield Federal Courthouse 510 19th Street, Bakersfield, CA 93301

Non-Dispositive Motion Deadlines:

- Filing: December 1, 2023
- Hearing: On or before January 5, 2024, at 10:30 a.m., in Bakersfield Federal Courthouse

Dispositive Motion Deadlines:

- Filing: January 19, 2024
- Hearing: March 4, 2024, at 1:30 p.m. in Robert E. Coyle Federal Courthouse, Fresno, Courtroom 1, 8th Floor

Pre-Trial Conference: August 12, 2024, at 1:30 p.m., in Fresno Federal Courthouse

Trial: October 22, 2024, at 8:30 a.m. in Fresno Federal Courthouse

Plaintiff initiated this action on August 24, 2022, in the Superior Court of the State of California, County of Kern. Defendant Walmart removed this action to federal court on October 26, 2022. Plaintiff raises personal injury claims against Defendants in connection with Plaintiff being hit

1 with shopping carts moved by Defendant Walmart's employees. Defendant Walmart denies
2 Plaintiff's allegation and asserts that his injuries were the result of his own carelessness, recklessness,
3 and/or conscious disregard of the area in which he was walking.¹

4 **I. Date of Scheduling Conference**

5 March 28, 2023, before Magistrate Judge Christopher D. Baker.

6 **II. Appearances of Counsel**

7 Arturo Salinas on behalf of Plaintiff.

8 Theodore Peters appeared on behalf of Defendant Walmart.

9 **III. Magistrate Judge Consent:**

10 Currently there is no joint consent to magistrate judge jurisdiction.

11 **Notice of Congested Docket and Court Policy of Trailing**

12 Due to the District Judges' heavy caseload, the adopted policy of the Fresno Division of the
13 Eastern District is to trail all civil cases. The parties are hereby notified that for a trial date set before a
14 District Judge, the parties will trail indefinitely behind any higher priority criminal or older civil case
15 set on the same date until a courtroom becomes available. The trial date will not be reset.

16 The Magistrate Judges' availability is far more realistic and accommodating to parties than that
17 of the District Judges who carry the heaviest caseloads in the nation and who must prioritize criminal
18 and older civil cases over more recently filed civil cases. A Magistrate Judge may conduct trials,
19 including entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73,
20 and Local Rule 305. Any appeal from a judgment entered by a Magistrate Judge is taken directly to the
21 United States Court of Appeal for the Ninth Circuit.

22 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to
23 conduct all further proceedings, including trial, and to file a consent/decline form (provided by the
24 Court at the inception of this case) indicating whether they will consent to the jurisdiction of the
25 Magistrate Judge.

26
27 ¹ By separate order this date, the Court ordered Plaintiff to show cause why named
28 Defendant Angie Carreles should not be dismissed from the action as she has not appeared, no
summons has been returned/filed executed, and there is no indication in the docket that she either
was served, filed an answer or made an appearance in the case prior to removal to this Court.

1 **IV. Pleading Amendment Deadline**

2 Any requested pleading amendments are ordered to be filed, either through a stipulation or
3 motion to amend, no later than **April 27, 2023**.² The parties are advised that filing a motion and/or
4 stipulation requesting leave to amend the pleadings does not reflect on the propriety of the amendment
5 or imply good cause to modify the existing schedule, if necessary. All proposed amendments must (A)
6 be supported by good cause pursuant to Fed. R. Civ. P. 16(b) if the amendment requires any
7 modification to the existing schedule, *see Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609
8 (9th Cir. 1992), and (B) establish, under Fed. R. Civ. P. 15(a), that such an amendment is not (1)
9 prejudicial to the opposing party, (2) the product of undue delay, (3) proposed in bad faith, or (4) futile,
10 *see Foman v. Davis*, 371 U.S. 178, 182 (1962).

11 **V. Discovery Plan and Cut-Off Date**

12 The parties represent that they have exchanged the initial disclosures required by Fed. R. Civ. P.
13 26(a)(1).

14 The parties are ordered to complete all discovery pertaining to non-experts on or before
15 **September 1, 2023**, and all discovery pertaining to experts on or before **November 17, 2023**.

16 The parties are directed to disclose all expert witnesses³, in writing, on or before **September 15,**
17 **2023**, and to disclose all rebuttal experts on or before **October 13, 2023**. The written designation of
18 retained and non-retained experts shall be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and
19 (C) and shall include all information required thereunder. Failure to designate experts in compliance
20 with this order may result in the Court excluding the testimony or other evidence offered through such
21 experts that are not disclosed pursuant to this order.

22 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts
23 and their opinions. Experts must be fully prepared to be examined on all subjects and opinions
24
25

26 ² All claims as to “Doe” Defendants shall be subject to dismissal in the event neither party
27 seeks through motion or stipulation to substitute a named party by this date.

28 ³ In the event an expert will offer opinions related to an independent medical or mental health
evaluation, the examination SHALL occur sufficiently in advance of the disclosure deadline so the
expert’s report fully details the expert’s opinions in this regard.

1 included in the designation. Failure to comply will result in the imposition of sanctions, which may
2 include striking the expert designation and preclusion of expert testimony.

3 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
4 disclosures and responses to discovery requests will be strictly enforced.

5 A mid-discovery status conference is scheduled for **July 19, 2023**, at 10:30 a.m. before
6 Magistrate Judge Christopher D. Baker. Counsel SHALL file a joint mid-discovery status conference
7 report no later than one week before the conference. Counsel also SHALL lodge the joint status report
8 via e-mail to CDBorders@caed.uscourts.gov. The joint status report SHALL outline the discovery
9 counsel have completed and that which needs to be completed as well as any impediments to
10 completing the discovery within the deadlines set forth in this order. Counsel SHALL discuss
11 settlement and certify in the joint status report (1) that they have met/conferred regarding settlement,
12 and (2) proposed dates for convening a settlement conference before a U.S. magistrate judge.

13 **VI. Pre-Trial Motion Schedule**

14 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
15 than **December 1, 2023**⁴ and heard on or before **January 5, 2024**. Discovery motions shall be set
16 before Magistrate Judge Baker. For these hearings and at the direction of the Courtroom Deputy Clerk,
17 the Court may permit counsel to appear remotely (via Zoom) or via teleconference [(877) 402-9757,
18 Access Code 6966236] provided the Courtroom Deputy Clerk receives a written notice of the intent to
19 appear telephonically no later than five court days before the noticed hearing date. All other non-
20 dispositive hearings SHALL be set before Judge de Alba.

21 No motion to amend or stipulation to amend the case schedule will be entertained unless it is
22 filed at least one week before the first deadline the parties wish to extend. Likewise, no written
23 discovery motions shall be filed without the prior approval Magistrate Judge Baker. A party with a
24 discovery dispute must first confer with the opposing party in a good faith effort to resolve by
25 agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party promptly
26 shall seek a telephonic hearing with all involved parties and Magistrate Judge Baker. To schedule this

27
28 ⁴ Non-dispositive motions related to non-expert discovery SHALL be filed within a reasonable
time of discovery of the dispute, but in no event later than 30 days after the expiration of the non-
expert discovery deadline.

1 telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at (661)
2 326-6620 or via email at SHall@caed.uscourts.gov. At least three days before the conference, counsel
3 SHALL file informal letter briefs detailing their positions. The briefs may not exceed 7 pages,
4 excluding exhibits. Counsel must comply with Local Rule 251 with respect to discovery disputes or
5 the motion will be denied without prejudice and dropped from the Court's calendar.

6 All dispositive pre-trial motions shall be filed no later than **January 19, 2024**, and heard no
7 later than **March 4, 2024**, in Courtroom 1 at 1:30 p.m. before the Honorable Ana de Alba, United
8 States District Judge. In scheduling such motions, counsel shall comply with Fed. R. Civ. P. 56 and
9 Local Rules 230 and 260.

10 **VII. Motions for Summary Judgment or Summary Adjudication**

11 At least 21 days before filing a motion for summary judgment or motion for summary
12 adjudication, the parties are ORDERED to meet, in person or by telephone, to confer about the issues to
13 be raised in the motion.

14 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
15 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
16 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the
17 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
18 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

19 The moving party SHALL initiate the meeting and SHALL provide a complete, proposed
20 statement of undisputed facts at least five days before the conference. The finalized joint statement of
21 undisputed facts SHALL include all facts that the parties agree, for purposes of the motion, may be
22 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
23 statement of undisputed facts.

24 In the notice of motion, the moving party SHALL certify that the parties have met and
25 conferred as ordered above or set forth a statement of good cause for the failure to meet and confer.
26 Failure to comply may result in the motion being stricken.

1 **VIII. Pre-Trial Conference Date**

2 **August 12, 2024**, at 1:30 p.m. in Courtroom 1 before the Honorable Ana de Alba, United States
3 District Judge.

4 The parties are ordered to file a Joint Pretrial Statement pursuant to Local Rule 281(a)(2). The
5 parties are further directed to submit a digital copy of their pretrial statement in Word format, directly
6 to Judge de Alba's chambers, by email at ADAorders@caed.uscourts.gov.

7 Counsels' attention is directed to Rules 281 and 282 of the Local Rules of Practice for the
8 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference.
9 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the
10 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the
11 Court to explain the nature of the case to the jury during voir dire.

12 **IX. Trial Date**

13 **October 22, 2024**, at 8:30 a.m. in Courtroom 1 before the Honorable Ana de Alba, United
14 States District Judge.

15 A. This is a jury trial.

16 B. Counsels' Estimate of Trial Time: 5-7 days

17 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of
18 California, Rule 285.

19 **X. Settlement Conference**

20 The parties are advised that Judge de Alba requires that a mandatory settlement conference be
21 conducted prior to trial by a federal judge. Where the parties filed a summary judgment/adjudication
22 motion, a settlement conference shall be scheduled 30 days after the motion is fully briefed. In cases
23 where the parties do not file a summary judgment/adjudication motions, a settlement conference shall
24 be scheduled 30 days after the last day for the filing of dispositive motions. Unless otherwise requested
25 by the parties, the Settlement Conference will be set before Magistrate Judge Baker.

26 **XI. Request for Bifurcation, Appointment of Special Master, or other**

27 **Techniques to Shorten Trial**

28 Not applicable at this time.

XII. Related Matters Pending

There are no pending related matters.

XIII. Compliance with Federal Procedure

All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently handle its increasing case load and sanctions will be imposed for failure to follow both the Federal Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of California.

XIV. Effect of this Order

The foregoing order represents the best estimate of the court and counsel as to the agenda most suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by subsequent status conference.

The dates set in this Order are considered to be firm and will not be modified absent a showing of good cause even if the request to modify is made by stipulation. Stipulations extending the deadlines contained herein will not be considered unless they are accompanied by affidavits or declarations, and where appropriate attached exhibits, which establish good cause for granting the relief requested.

Failure to comply with this order may result in the imposition of sanctions.

IT IS SO ORDERED.

Dated: March 28, 2023


UNITED STATES MAGISTRATE JUDGE